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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 STEVEN GIANESINI,

9 Plaintiff,

10 v.

11 THE BOEING COMPANY,

12 Defendant.

C21-187 TSZ

ORDER

13 THIS MATTER comes before the Court on the Motion to Dismiss, docket no. 15,
14 filed by Defendant The Boeing Company (“Boeing”). Having reviewed all papers filed
15 in support of, and in opposition to, the motion, the Court enters the following Order.

16 **Background**

17 For several years, Plaintiff Steven Giancesini worked for Boeing, as a member of
18 the Network Design Team, in Kent, Washington. First Amended Complaint (“FAC”) at
19 ¶¶ 2.6, 3.1 (docket no. 10). Plaintiff alleges that discriminatory conduct on account of his
20 national origin and disabilities began in May 2017. *Id.* at ¶¶ 3.3–3.25. In early January
21 2018, Plaintiff overheard a Boeing manager tell other Boeing employees that “[y]ou
22 know how those Italians are, you gotta get em while their [sic] weak.” *Id.* at ¶ 3.25.
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1 Plaintiff, who is of Italian descent, believed that the manager’s comment was directed at
2 him. *Id.* at ¶¶ 3.25, 4.62. Plaintiff allegedly reported the incident to Boeing’s human
3 resources department on January 24, 2018; but human resources concluded that
4 Plaintiff’s report was “unfounded” and told Plaintiff that he is “not going to have many
5 friends if [he] continue[s] to ruffle feathers” at Boeing. *Id.* at ¶¶ 3.25, 3.26.

6 Boeing’s treatment of Plaintiff allegedly caused him to suffer “prolonged stress”
7 and “severe anxiety affecting his sleep, asthma, health, and voice,” so he decided to take
8 a leave of absence. *Id.* at ¶ 3.29. On February 14, 2018, Plaintiff resigned from Boeing
9 altogether. *Id.* at ¶ 3.30. Plaintiff alleges that, after Boeing determined that his report of
10 discrimination was “unfounded,” he “felt he had no choice but to resign from his
11 position.” *Id.*

12 On February 12, 2021, Plaintiff brought this action against Boeing in state court,
13 asserting a single cause of action¹ for “discrimination . . . based on his national origin.”
14 Complaint at ¶ 4.2 (docket no. 1-1). After Boeing removed this diversity action to federal
15 court, Plaintiff filed the FAC, docket no. 10, on March 15, 2021, asserting nine causes of
16 action: (1) a national origin discrimination claim under Washington’s Law Against
17 Discrimination (“WLAD”), chapter 49.60 RCW; (2) a disability discrimination claim
18 under the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12112; (3) a disability
19 discrimination and failure to accommodate claim under WLAD; (4) a hostile work
20 environment claim under Title VII of the Civil Rights Act of 1964 (“Title VII”), 42

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22 ¹ For ease of reference, the Court will also refer to these causes of action as “claims.”
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U.S.C. § 2000e; (5) a Title VII retaliation claim; (6) a state law claim for constructive discharge; (7) a Title VII claim for failure to maintain a harassment-free environment; (8) a state law claim for intentional infliction of emotional distress (“IIED”); and (9) a Title VII claim for race or national origin discrimination. *See* FAC at ¶¶ 4.1–4.70. Boeing now moves to dismiss the FAC.

Discussion

1. Motion to Dismiss Standard

Although a complaint challenged by a Rule 12(b)(6) motion to dismiss need not provide detailed factual allegations, it must offer “more than labels and conclusions” and contain more than a “formulaic recitation of the elements of a cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A complaint may be lacking because it fails to state a cognizable legal theory or because it fails to state sufficient facts under a cognizable legal claim. *See Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). In ruling on a motion to dismiss, the Court must assume the truth of the plaintiff’s allegations and draw all reasonable inferences in the plaintiff’s favor. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). If the Court dismisses the complaint, it must consider whether to grant leave to amend. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

2. Federal Claims (Second, Fourth, Fifth, Seventh, and Ninth Causes of Action)

For the first time in the FAC, docket no. 10, Plaintiff asserts five claims under federal law, namely the ADA and Title VII. Plaintiff now concedes that his “federal

1 claims cannot proceed due to [a] procedural deficiency for lack of filing with the [Equal
2 Employment Opportunity Commission] within 300 days.” Response (docket no. 19 at
3 17); *see* 42 U.S.C. §§ 2000e-5(e)(1), 12117(a). The Second, Fourth, Fifth, Seventh, and
4 Ninth Causes of Action are DISMISSED with prejudice for failure to timely exhaust.

5 **3. State Law Claim for Disability Discrimination and Failure to**
6 **Accommodate (Third Cause of Action)**

7 Plaintiff’s claim for disability discrimination and failure to accommodate under
8 WLAD, first asserted in the FAC, is time barred because it does not relate back to the
9 allegations in the original Complaint. Federal Rule of Civil Procedure 15(c) provides that
10 “[a]n amendment to a pleading relates back to the date of the original pleading when . . .
11 the amendment asserts a claim . . . that arose out of the conduct, transaction, or
12 occurrence set out—or attempted to be set out—in the original pleading.” Fed. R. Civ.
13 P. 15(c)(1)(B). “Claims arise out of the same conduct . . . if they ‘share a common core
14 of operative facts’ such that the plaintiff will rely on the same evidence to prove each
15 claim.” *Williams v. Boeing Co.*, 517 F.3d 1120, 1133 (9th Cir. 2008). This requirement
16 “is meant to ensure that the original pleading provided adequate notice of the claims
17 raised the amended pleading.” *Id.* at 1133 n.9.

18 Plaintiff does not dispute that he was required to assert the WLAD claim for
19 disability discrimination within three years of the date on which he resigned, February
20 14, 2018. Response (docket no. 19 at 17–18); *see also Douchette v. Bethel Sch. Dist.*
21 *No. 403*, 117 Wn.2d 805, 816, 818 P.2d 1362 (1991) (en banc) (concluding that the three-
22 year limitations period for WLAD claims started to run on the date that the employee
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1 resigned).² Nor does Plaintiff dispute that he asserted a disability discrimination claim
2 for the first time in the FAC, on March 15, 2021, which is more than three years from the
3 date of his resignation.³ Response (docket no. 19 at 17–18). Plaintiff instead argues that
4 the disability discrimination claim relates back to the conduct alleged in the original
5 Complaint, which was filed on February 12, 2021, because all of the conduct was “at the
6 same workplace” and “occurred by the same persons.” *Id.* at 17.

7 The original Complaint, docket no. 1-1, which asserted a single state law claim for
8 national origin discrimination, did not include any allegations indicating that Plaintiff
9 suffered from disabilities or that Boeing engaged in conduct that gives rise to Plaintiff’s
10 claim for disability discrimination or failure to accommodate. Accordingly, the newly
11 asserted disability discrimination claim in the FAC, docket no. 10, does not arise “out of
12 the same conduct, transaction, or occurrence set out—or attempted to be set out—in the
13 original pleading,” Fed. R. Civ. P. 15(c)(1)(B). Plaintiff attempts to assert “a new legal
14 theory depending on different facts, not a new legal theory depending on the same facts.”
15 *Williams*, 517 F.3d at 1133. The Third Cause of Action is DISMISSED with prejudice as
16 time barred.

19 ² Boeing maintains that the “standard rule is that the claim accrues when the alleged discrimination
20 occurs,” not when the consequences of the acts manifest themselves. Reply (docket no. 22 at 7 & n.4).
21 While that might be the prevailing federal rule, *see Del. State Coll. v. Ricks*, 449 U.S. 250 (1980), the
Washington Supreme Court has held that WLAD claims for discrimination and wrongful discharge might
accrue on the date of the employee’s resignation. *See Douchette*, 117 Wn.2d at 816.

22 ³ Plaintiff does not argue that equitable grounds exist to toll the limitations period. *See Douchette*, 117
Wn.2d at 813.

1 **4. State Law Claims for National Origin Discrimination,**
2 **Constructive Discharge, and IIED (First, Sixth, and Eighth Causes of**
3 **Action)**

4 **a. Relation Back of Amendments**

5 Plaintiff's remaining state law claims for national origin discrimination under
6 WLAD, constructive discharge, and IIED were either pleaded in the original Complaint,
7 or they were pleaded in the FAC and relate back to the allegations set out in the
8 Complaint.

9 Plaintiff's original Complaint, docket no. 1-1, asserted one claim for
10 "discrimination . . . based on his national origin through descent and heritage of being
11 Italian," in "violation of state law." Complaint at ¶¶ 4.2, 5.1. As originally pleaded,
12 those allegations are sufficient to put Boeing on notice that Plaintiff is asserting a WLAD
13 claim for national origin discrimination. *See* Fed. R. Civ. P. 8(a)(2); *Williams*, 517 F.3d
14 at 1130. Moreover, the FAC, docket no. 10, expressly asserts the WLAD claim and relies
15 on the same conduct that was alleged in the original Complaint. *See* Fed. R. Civ. P.
16 15(c)(1)(B).

17 The claims for constructive discharge⁴ and IIED also relate back to the allegations
18 in the Complaint. That original pleading alleged that after the Boeing manager made a
19 derogatory comment about Plaintiff's Italian heritage, Plaintiff reported that comment to
20 Boeing, and human resources "took no action" and told Plaintiff "that if [he] report[s]

21 ⁴ As explained in Section 4(c), below, Washington courts do not recognize a stand-alone claim for
22 *constructive* discharge, but rather a claim for *wrongful* discharge in violation of public policy based on
23 constructive discharge.

1 these things . . . , [he is] not going to have that many friends and . . . will continue to
2 ruffle feathers.” Complaint at ¶¶ 3.4, 4.3. Plaintiff further alleged that Boeing’s actions
3 “forced him to leave his employment” and he “has been damaged” as a result. *Id.* at
4 ¶ 4.4. The new allegations in the FAC for constructive discharge and IIED arise out of
5 the same conduct and occurrences that were alleged in the Complaint, *see* Fed. R. Civ.
6 P. 15(c)(1)(B).

7 **b. Timeliness of Claims**

8 The Court, however, cannot decide whether the WLAD, wrongful discharge, or
9 IIED claims were timely filed on February 12, 2021. Each claim is subject to a three-
10 year statute of limitations. *See* RCW 4.16.080(2); *Antonius v. King County*, 153 Wn.2d
11 256, 261–62, 103 P.3d 729 (2004) (en banc) (applying RCW 4.16.080(2)’s limitation
12 period to WLAD claims); *Barnett v. Sequim Valley Ranch, LLC*, 174 Wn. App. 475, 485,
13 302 P.3d 500 (2013) (same, to wrongful discharge claims based on constructive
14 discharge); *Cox v. Oasis Physical Therapy, PLLC*, 153 Wn. App. 176, 192, 222 P.3d 119
15 (2009) (same, to IIED claims).

16 Under certain circumstances, the limitations period for these claims might not
17 begin to run until the date of the employee’s resignation. *See Douchette*, 117 Wn.2d at
18 816. For hostile work environment claims in particular, a court may consider “the entire
19 time period of the hostile environment” to determine an employer’s liability, “[p]rovided
20 that an act contributing to the claim occurs within the filing period.” *Antonius*, 153
21 Wn.2d at 264 (quoting *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002)).
22 “The standard for linking discriminatory acts together in the hostile work environment
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context is not high.” *Loeffelholz v. Univ. of Wash.*, 175 Wn.2d 264, 276, 285 P.3d 854 (2012) (en banc). For disparate treatment claims involving “discrete acts,” however, “the limitations period runs from the act itself.” *See Antonius*, 153 Wn.2d at 264 (citing *Morgan*, 536 U.S. at 108–113).

In this case, the FAC does not expressly indicate when Boeing informed Plaintiff that his report of national origin discrimination was “unfounded,” or whether Boeing took any other action giving rise to these claims within the limitations period, i.e., on or after February 12, 2018. *See* FAC at ¶¶ 3.25, 3.30. For these claims to be timely, Plaintiff must allege facts plausibly showing that Boeing’s acts, which give rise to his claims, occurred within the filing period. *See Antonius*, 153 Wn.2d at 264. To the extent that Plaintiff asserts a WLAD claim for hostile work environment,⁵ Plaintiff must plausibly allege that at least one of the acts contributing to the claim occurred within that period. *See id.* at 264, 273. In light of the Court’s ruling that the allegations in the FAC are also insufficient to state a claim for relief, as explained in Section 4(c) below, the Court need not and does not address whether the remaining state law claims are timely.

c. Failure to State a Claim for Relief

Although the state law claims for national origin discrimination, constructive discharge, and IIED were timely filed, the claims, as currently pleaded, are insufficient to state a claim for relief under Rule 12(b)(6).

⁵Although Plaintiff has pleaded the WLAD claim based on national origin discrimination under a disparate treatment theory, *see* FAC at ¶¶ 4.1–4.3, Plaintiff also asserts that he was subjected to a hostile work environment, and resigned, because of that discrimination. *See id.* at ¶¶ 3.30, 4.23–4.24.

1 **i. National Origin Discrimination**

2 Although Plaintiff brings the WLAD claim for national origin discrimination (First
3 Cause of Action) as a “disparate treatment” claim, FAC at ¶¶ 4.1–4.3, he also appears to
4 assert that such discrimination amounted to a “hostile work environment,” *id.* at ¶¶ 4.23–
5 4.24, 4.63. Accordingly, the Court analyzes this WLAD claim under both legal theories.

6 With regard to the disparate treatment claim,⁶ *see id.* at ¶ 4.3, Plaintiff fails to
7 allege sufficient facts to plausibly establish a prima facie case. The FAC alleges that
8 shortly before Plaintiff resigned, his manager said in front of Plaintiff and apparently
9 directed at him, “you gotta get [Italians] while their [sic] weak,” *id.* at ¶ 3.25. The FAC
10 also alleges that Plaintiff “had been removed as the SharePoint administrator” and “was
11 passed up for promotions” after Plaintiff reported “violations of law, including
12 international law”; but “[o]ther persons, similarly situated, were not treated in the same
13 manner as [Plaintiff] was being treated and instead were favored for their lack of
14 reporting, failure to work (playing games during work), and ability to hear.” *Id.* at ¶ 3.28.
15 These allegations, standing alone, fail to plausibly show any connection between the
16 national origin discrimination and the alleged adverse employment actions taken against
17 Plaintiff. For example, Plaintiff has not alleged that after Boeing removed him from the
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20 ⁶ “To establish a prima facie disparate treatment case, an employee must show that (1) he or she belongs
21 to a protected class, (2) he or she was treated less favorably in the terms and conditions of employment,
22 (3) a similarly situated employee outside the protected class received the benefit, and (4) the employees
23 were doing substantially the same work.” *Crownover v. State*, 165 Wn. App. 131, 147, 265 P.3d 971
(2011).

1 SharePoint administrator position or failed to promote him, “similarly situated
2 employee[s] *outside the protected class* received the benefit” of those employment
3 decisions. Crownover v. State, 165 Wn. App. 131, 147, 265 P.3d 971 (2011) (emphasis
4 added).⁷ Nor is there any indication that the same manager who made the derogatory
5 comment about Italians also demoted or failed to promote Plaintiff.

6 Even assuming that Plaintiff can cure the pleading deficiencies with respect to his
7 disparate treatment claim, the Court again notes that for claims involving “discrete acts,
8 the limitations period runs from the act itself.” See Antonius, 153 Wn.2d at 264. In other
9 words, with respect to the disparate treatment claim, the Court cannot consider any
10 discrete act outside of the limitations period “even if it relates to acts alleged in timely
11 filed charges.” Id.

12 To the extent that Plaintiff asserts a hostile work environment claim based on
13 national origin discrimination,⁸ see FAC at ¶¶ 4.23–4.24, Plaintiff appears to exclusively
14 rely on the manager’s comment about Italians, id. at ¶ 3.25. Apart from a separate
15 comment regarding a “Polish salute,” which was not directed at Plaintiff and apparently
16 has nothing to do with his national origin, the other alleged discriminatory conduct is

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19 ⁷ Although Plaintiff alleged in connection with his federal claim that “the positions [Plaintiff] applied to,
20 [were] at all times awarded to someone inferior than” Plaintiff, see FAC at ¶ 4.66, that assertion does not
indicate whether those employees were outside the protected class or doing substantially the same work
as Plaintiff.

21 ⁸ “To establish a prima facie hostile work environment claim, a plaintiff must show the following four
22 elements: (1) the harassment was unwelcome, (2) the harassment was because [plaintiff was a member of
a protected class], (3) the harassment affected the terms and conditions of employment, and (4) the
harassment is imputable to the employer.” Loeffelholz, 175 Wn.2d at 275.

1 unrelated to this claim. See FAC at ¶¶ 3.2–3.24. The manager’s one-time comment
2 about Italians was a “[c]asual, isolated, or trivial incident,” which does “not affect the
3 terms or conditions of employment to a sufficiently significant degree to violate the law.”
4 See Crownover, 165 Wn. App. at 146. The remaining alleged conduct is merely
5 “[e]mbarrassment, humiliation or mental anguish from nondiscriminatory harassment,”
6 which is insufficient to state a WLAD claim for discrimination. Id. (quoting Adams v.
7 Able Bldg. Supply, Inc., 114 Wn. App. 291, 298, 57 P.3d 280 (2002)). Plaintiff has failed
8 to provide sufficient context for the manager’s comment about Italians and has otherwise
9 failed to allege facts suggesting that the treatment was “so extreme as to amount to a
10 change in the terms and conditions of employment.” Crownover, 165 Wn. App. at 146
11 (citation omitted); see also Alonso v. Qwest Comms. Co., 178 Wn. App. 734, 747, 315
12 P.3d 610 (2013) (“The WLAD is not intended as a general civility code . . . [a]nd not
13 everything that makes an employee unhappy is an actionable adverse action.”).

14 Because the allegations are insufficient to plausibly state claims for disparate
15 treatment or hostile work environment, the First Cause of Action is DISMISSED without
16 prejudice.

17 **ii. Constructive Discharge**

18 Plaintiff’s claim for constructive discharge (Sixth Cause of Action) is treated as a
19 claim for wrongful discharge in violation of public policy based on constructive
20 discharge, but the facts alleged do not support that legal theory. Plaintiff labels this claim
21 as one for “constructive discharge,” see FAC at ¶ 4.40, but “Washington law does not
22 recognize a cause of action for *constructive* discharge; rather the law recognizes an action
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1 for *wrongful* discharge which may be either express or constructive.” Snyder v. Med.
2 Serv. Corp. of E. Wash., 145 Wn.2d 233, 238, 35 P.3d 1158 (2001) (en banc). Although
3 Plaintiff’s factual allegations are sufficient to put Boeing on notice that Plaintiff is in fact
4 asserting a claim for wrongful discharge in violation of public policy based on
5 constructive discharge, see FAC at ¶¶ 4.40–4.43; Fed. R. Civ. P. 8(a)(2), Plaintiff must
6 nevertheless plead *all* of the elements of a wrongful discharge claim, including “that a
7 stated public policy, either legislatively or judicially recognized, may have been
8 contravened.” Snyder, 145 Wn.2d at 239.⁹

9 More critically, to support such a theory, Plaintiff must also allege facts plausibly
10 “show[ing] that [Boeing] engaged in a deliberate act, or a pattern of conduct, that made
11 working conditions so intolerable that a reasonable person would have felt compelled to
12 resign.” Barnett, 174 Wn. App. at 485. “This is an objective standard and an
13 ‘employee’s subjective belief that he had no choice but to resign is irrelevant.’” Id.
14 (citation omitted).

15 Plaintiff cites several examples of deliberate conduct that allegedly made his
16 working conditions intolerable. See FAC at ¶¶ 3.2–3.30. Plaintiff alleges that before
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18 ⁹ Boeing misconstrues Plaintiff’s claim for “national origin constructive discharge” as a WLAD claim and
19 argues that it is duplicative of the WLAD claim for “national origin disparate treatment.” Motion to
20 Dismiss (docket no. 15 at 13). The FAC, however, references the “common law tort of constructive
21 discharge whereby an employee who quits can establish a wrongful termination,” and relies exclusively
22 on case law involving claims for wrongful discharge in violation of public policy. FAC at ¶ 4.41.
23 Plaintiff is permitted to plead alternative theories of liability at this stage in the proceedings. See Fed. R.
Civ. P. 8(d)(3); see also Piel v. City of Federal Way, 177 Wn.2d 604, 614–15, 306 P.3d 879 (2013) (en
banc) (recognizing the “long line of precedent allowing wrongful discharge tort claims to exist alongside
sometimes comprehensive administrative remedies”).

1 resigning, he took a leave of absence to deal with his “severe anxiety affecting his sleep,
2 asthma, health, and voice” due to the “prolonged stress from the aggressive tormenting”
3 and other treatment. *Id.* at ¶ 3.29. Plaintiff also alleges that “he felt he had no choice but
4 to resign” after human resources found that his report of discrimination, filed in late
5 January 2018, was “unfounded.” *Id.* at ¶¶ 3.25, 3.30. Even assuming that the conduct
6 alleged was objectively “intolerable,” Plaintiff apparently resigned just a few weeks after
7 first reporting the national origin discrimination to Boeing, and while on a leave of
8 absence. Plaintiff does not explain why the leave of absence was insufficient to improve
9 the working conditions, and he apparently did not appeal or otherwise challenge the
10 dismissal of his discrimination report. Based on these allegations, even drawing all
11 inferences in Plaintiff’s favor, the Court concludes that the alleged facts do not support a
12 claim that a reasonable person would have felt compelled to resign. *See Molsness v. City*
13 *of Walla Walla*, 84 Wn. App. 393, 399, 928 P.2d 1108 (1996) (concluding that a plaintiff
14 facing the threat of termination may have “subjectively believed that he had no choice but
15 to resign,” but “[o]bjectively, he did have a choice . . . to ‘stand pat and fight’”). The
16 Sixth Cause of Action is DISMISSED without prejudice.

17 iii. IIED

18 Plaintiff’s allegations are also insufficient to state a claim for IIED (Eighth Cause
19 of Action), also known as the tort of outrage, which requires “a plaintiff [to] show ‘(1)
20 extreme and outrageous conduct; (2) intentional or reckless infliction of emotional
21 distress; and (3) actual result to the plaintiff of severe emotional distress.’” *Snyder*, 145
22 Wn.2d at 242 (quoting *Birklid v. Boeing Co.*, 127 Wn.2d 853, 867, 904 P.2d 278 (1995)).
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1 “[T]he conduct in question must be *so outrageous in character, and so extreme in degree,*
2 *as to go beyond all possible bounds of decency, and to be regarded as atrocious, and*
3 *utterly intolerable in a civilized community.*” *Id.* (quoting *Birklid*, 127 Wn.2d at 867)
4 (emphasis in original). For the same reasons that the allegations supporting the wrongful
5 discharge claim fall short, the conduct alleged in the FAC does not plausibly assert that
6 Boeing’s conduct was so outrageous in character, or so extreme in degree, to justify
7 liability for IIED. The Eighth Cause of Action is DISMISSED without prejudice.

8 **Conclusion**

9 For the foregoing reasons, the Court ORDERS:

10 (1) Defendant’s Motion to Dismiss, docket no. 15, is GRANTED as follows:

11 (a) With regard to Plaintiff’s federal claims for (i) disability
12 discrimination under the ADA (Second Cause of Action), (ii) hostile work environment
13 under Title VII (Fourth Cause of Action), (iii) retaliation under Title VII (Fifth Cause of
14 Action), (iv) failure to maintain a harassment-free environment under Title VII (Seventh
15 Cause of Action), and (v) national origin discrimination under Title VII (Ninth Cause of
16 Action), the motion is GRANTED, and these federal claims are DISMISSED **with**
17 prejudice;

18 (b) With regard to the WLAD claim for disability discrimination (Third
19 Cause of Action), the motion is GRANTED, and this claim is DISMISSED **with**
20 prejudice as time barred; and

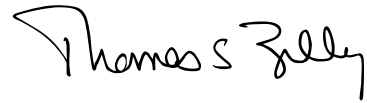
21 (c) With regard to Plaintiff’s state law claims for (i) national origin
22 discrimination under WLAD (First Cause of Action), (ii) wrongful discharge (Sixth
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1 Cause of Action), and (iii) IIED (Eighth Cause of Action), the motion is GRANTED, and
2 these claims are DISMISSED, without prejudice and with leave to amend, for failure to
3 state a claim. Plaintiff shall electronically file any amended complaint with regard to
4 these three claims, via the Case Management / Electronic Case Filing ("CM/ECF")
5 system, on or before **June 15, 2021**. Any response is due within fourteen (14) days after
6 the amended complaint is filed. *See* Fed. R. Civ. P. 15(a)(3).

7 (2) The Clerk is directed to send a copy of this Order to all counsel of record.

8 IT IS SO ORDERED.

9 Dated this 14th day of May, 2021.

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13 Thomas S. Zilly
14 United States District Judge
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